

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MAERSK LINE A/S,

Plaintiff,

-v-

GLOBAL TRANS LLC,

Defendant.
-----X

22 Civ. 3837 (JPC)

ORDER


JOHN P. CRONAN, United States District Judge:

Plaintiff Maersk Line A/S has filed a proposed Clerk’s Certificate of Default, Dkt. 8, and a supporting Declaration submitted pursuant to Local Civil Rule 55.1, Dkt. 9. That Rule requires an application for entry of default to be supported by “an affidavit demonstrating that: . . . (3) the pleading to which no response has been made was properly served.” Local Civil Rule 55.1(b). Plaintiff’s supporting Declaration fails to make that demonstration. Rule 4(h) of the Federal Rules of Civil Procedure requires “a domestic or foreign corporation . . . [to] be served: (1) in a judicial district of the United States: (A) in the manner prescribed b Rule 4(e)(1) for serving an individual.” Fed. R. Civ. P. 4(h). Rule 4(e)(1), in turn, authorizes service by “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made.” Fed. R. Civ. P. 4(e)(1). Because Defendant Global Trans LLC was served in Texas, service would have been proper if it followed Texas law governing the service of process. Plaintiff’s Declaration fails to demonstrate, however, that Defendant was served in accordance with Texas law. First, the Declaration cites a provision of Texas law—namely, Article 2.11 of the Texas Business Corporation Act—that expired in 2010. *See* An Act Relating to Adoption of the Business Organizations Code, 2003 Tex. Gen. Laws 267, 595 (amending the Texas

Business Corporation Act to add Article 11.02, which reads in part, “B. This Act expires January 1, 2010”). Moreover, while section 5.251 of the Texas Business Organizations Code sets forth various conditions under which “the secretary of state is an agent of an entity for purposes of service of process . . . on the entity,” Tex. Bus. Orgs. Code Ann. § 5.251 (West 2021), Plaintiff’s Declaration does not include facts demonstrating that any of those conditions are met. In particular, the Declaration does not claim that Defendant has failed to appoint or to maintain a registered agent in Texas, *id.* §5.521(1)(A), or that Defendant’s registered agent cannot with reasonable diligence be found at Defendant’s registered office, *id.* §5.521(1)(B). And since Defendant is allegedly a Texas corporation, *see* Dkt. 1 at 3, Plaintiff could not serve Defendant through the secretary of state pursuant to section 5.251(2), which applies only to foreign filing entities. *See id.* §5.521(2); *see also id.* § 1.002(28)-(29) (defining “foreign entity” and “foreign filing entity”). Therefore, by January 13, 2023, Plaintiff shall submit a supplemental declaration demonstrating that Defendant was properly served under currently valid Texas law. The Clerk of Court is respectfully directed not to issue the Certificate of Default Plaintiff seeks absent further order of the Court.

SO ORDERED.

Dated: January 6, 2023
New York, New York



JOHN P. CRONAN
United States District Judge